

**OUR REF:** OP 3102/2019 (Doc ID: 901529)

16 May 2019

M P Flinn  
PO Box 1003  
PORT DOUGLAS QLD 4877

Dear Sir

**DECISION NOTICE FOR OPERATIONAL WORKS VEGETATION  
DAMAGE/CLEARING  
49-51 NAUTILUS STREET PORT DOUGLAS: ON LAND DESCRIBED AS LOT 5  
ON RP744198**

Council acknowledges the above Development Application lodged and as properly made on 26 April 2019.

Please find attached the relevant Decision Notice for the above mentioned Operational Works.

Please quote Council application number: OP3102/2019 in all subsequent correspondence relating to this development application. Should you require further information or assistance, please contact Melissa Mitchell of Development and Environment on telephone 07 4099 9487.

Yours faithfully

Paul Hoyer  
Manager Environment & Planning

Encl.

- Decision Notice
- Approved Plans
- Rights to Make Representations and Rights of Appeal

**DOUGLAS SHIRE COUNCIL  
DECISION NOTICE —  
APPROVAL (WITH CONDITIONS)  
(GIVEN UNDER SECTION 63 OF *THE PLANNING ACT 2016*)**

Council refers to the development application detailed below which was properly made on 26 April 2019. Please be aware that Douglas Shire Council has assessed the application and decided it as follows.

**1. *Applicant's details***

---

Name: Mark Patterson Flinn

Postal Address: M P Flinn  
PO Box 1003  
PORT DOUGLAS QLD 4877

**2. *Location details***

---

Street Address: 49-51 Nautilus Street Port Douglas

Real Property Description: Lot 5 on RP744198

Local Government Area: Douglas Shire Council

**3. *Details of proposed development***

---

Development Permit for Operational Work for Vegetation Damage/Clearing.

**4. *Decision***

---

Date of decision: 16 May 2019

Decision details: Approved in full with conditions. These conditions are set out in Schedule 1 and are clearly identified to indicate whether the assessment manager or a concurrence agency imposed them.

**5. *Approved plans and specifications***

---

Copies of the following plans, specifications and/or drawings are enclosed.

Drawing/report title	Prepared by	Date	Reference no.	Version/issue
<b>Aspect of development: Operational Work – Vegetation Damage/Clearing</b>				
Tree Report	Port Douglas Tree Service	24/04/2019		Version 1

## **6. Further development permits**

---

Not applicable – No development permits are required

## **7. Properly made submissions**

---

Not applicable — No part of the application required public notification.

## **8. Currency period for the approval**

---

This development approval, granted under the provisions of the *Planning Act 2016*, shall lapse two (2) years from the day the approval takes effect in accordance with the provisions of Section 85 of *Planning Act 2016*.

## **9. Rights to make representations and rights of appeal**

---

The rights of applicants to make representations and rights to appeal to a tribunal or the Planning and Environment Court against decisions about a development application are set out in Chapter 6, Part 1 of the *Planning Act 2016*.

Schedule 2 includes extracts from the Development Assessment Rules and the *Planning Act 2016* that sets down these rights.

## SCHEDULE 1 – CONDITIONS AND ADVICE

### PART 1A – CONDITIONS IMPOSED BY THE ASSESSMENT MANAGER

The standard conditions are shown in Appendix A and must be read in conjunction with any approved plans and project specific conditions identified below.

- 1 Carry out the approved development generally in accordance with the approved drawing(s) and/or documents, and in accordance with:
  - a. The specifications, facts and circumstances as set out in the application submitted to Council;
  - b. The following conditions of approval and the requirements of Council's Planning Scheme and the *FNQROC Development Manual*.

Except where modified by these conditions of approval.

2. The trees and/or vegetation to be removed (the subject of this approval) are identified on the plan attached as Appendix 1.
3. No other trees or vegetation are to be removed or damaged, and the removal of the subject trees is to be undertaken in a manner that incurs no damage to nearby vegetation.
4. Council's Environment and Planning Department must be notified two (2) business days prior to the proposed date of commencement of any approved vegetation clearing.
5. All pruning/ removal works must conform to AS4373 (2007) and be undertaken by a suitably qualified and experienced contractor having full regard to safety precautions and considerations who is able to demonstrate a comprehensive Occupational Health and Safety Policy specific to tree work with relevant insurances in place.
6. The work authorized by this approval must be carried out in an environmentally sensitive manner in accordance with the conditions of this approval. If in doubt the precautionary principle should be applied. Stop work and contact Council for advice.
7. Prior to the removal of any tree, an inspection must be carried out for any signs of protected wildlife including nests and animal habitat. Should any recent wildlife activity be identified, removal of the tree must not occur until the animal has vacated the area of immediate danger.
8. Trees and/or vegetation that contain nesting native birds, dens or roosting sites of native animals are not to be removed while the nests, dens or roosting sites are in use, as per the requirements of the *Nature Conservation (Wildlife Management) Regulation 2006*, without the necessary approval. Information on approvals may be obtained at [www.ehp.qld.gov.au](http://www.ehp.qld.gov.au) or by contacting the Wildlife Management Unit, Department of Environment and Heritage Protection, Cairns, on 07 4769 7791.
9. A clearing permit (protected plants) must be obtained from the Department of Environment and Heritage Protection for the relocation of all specimens of 'Ant Plant' (*Myrmecodia beccarii*) prior to the removal of any host trees. 'Ant Plants' are listed as Vulnerable under both the *Nature Conservation Act 1992* and the *Environment Protection & Biodiversity Conservation Act 1999*. Information on clearing permits may be obtained at [www.ehp.qld.gov.au](http://www.ehp.qld.gov.au) or by contacting Kerry Walsh, Wildlife Ranger, Wildlife Management Unit, Department of Environment and Heritage Protection, Cairns, on 07 4057 3704.

10. Damaged Vegetation:

- a. Damaged vegetation is removed and disposed of at an approved site; and/or
- b. Damaged vegetation is mulched or chipped and used onsite.

**Part 1B- ADVICE NOTES**

1. This approval, granted under the provisions of the *Planning Act* 2016, shall lapse two (2) years from the day the approval takes effect in accordance with the provisions of section 85 of the *Planning Act* 2016.
2. This approval does not negate the requirement for compliance with all other relevant Local Laws and other statutory requirements.
3. For information relating to the *Planning Act* 2016 log on to [www.dsdip.qld.gov.au](http://www.dsdip.qld.gov.au) . To access the *FNQROC Development Manual*, Local Laws and other applicable Policies log on to [www.douglas.qld.gov.au](http://www.douglas.qld.gov.au) .

## APPROVED PLAN (S) & SPECIFICATIONS

24th April 2019

Address: 51 Nautilus Street, Port Douglas

Owner: Mark Flinn

Species: Melaleuca Leucadendra x9

Location: RHS Boundry

Height: Approx 18m

DBH: Variuos 450mm-750mm

There is a stand of 9 Melaleuca Leucadendra located on the east boundry of 51 Nautilus Street between existing residence and the east boundry. Most are semi mature trees with varing degrees of habbit. Due to their close proxitimity to each other the upper and mid canopies comprise of long skinny limbs with very minimal taper resulting in weakness.

The trunks and lower scaffolding branches are covered with feral vines which make it impossible to observe structural integrity. There are many bificated branches with accute crotch angles displaying many possibilities for failure. (As yet these trees show minimum history of branch failure but if made to be retained may)

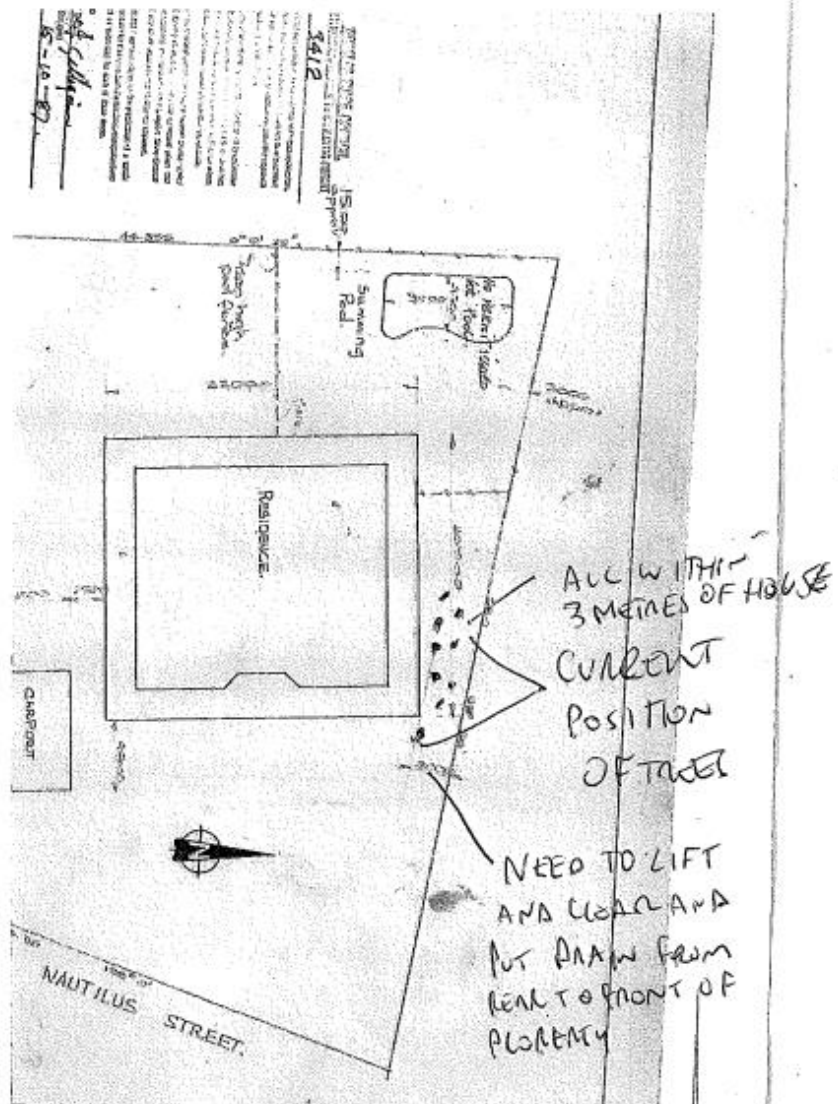
The trees slt in a very wet corridoor on a substantially swampy section. They are at this stage impeding on a major darinage thouroughfare wanting to be implemented by the new owner who is very concerned about Dengie Fever and still water lying around for long periods of time.

The block of land (51 Nautilus Street) houses 4 substantial mature trees which will be retained aswell as an entire rear fence line which still needs two branches trimmed to be completed. It also has a substantial amount of large trees on the reserve in front of the house.

The proposed finished profile of the large 1/2 acre property (which will be built up in areas and graduated to promote water run off) is suburibis with some mature trees, well drained and safe for occupants and neighbouring properties. Without the removal of these trees correct drainage will be impossible and the threat of damage a big possibility.

Tim Pidgeon

Port Douglas Tree Services



- (2) The person is taken to have engaged in the representative's conduct, unless the person proves the person could not have prevented the conduct by exercising reasonable diligence.
- (3) In this section—
  - conduct* means an act or omission.
  - representative* means—
    - (a) of a corporation—an executive officer, employee or agent of the corporation; or
    - (b) of an individual—an employee or agent of the individual.
  - state of mind*, of a person, includes the person's—
    - (a) knowledge, intention, opinion, belief or purpose; and
    - (b) reasons for the intention, opinion, belief or purpose.

## Chapter 6 Dispute resolution

### Part 1 Appeal rights

#### 229 Appeals to tribunal or P&E Court

- (1) Schedule 1 states—
  - (a) matters that may be appealed to—
    - (i) either a tribunal or the P&E Court; or
    - (ii) only a tribunal; or
    - (iii) only the P&E Court; and
  - (b) the person—
    - (i) who may appeal a matter (the *appellant*); and
    - (ii) who is a respondent in an appeal of the matter; and



- (iii) who is a co-respondent in an appeal of the matter; and
  - (iv) who may elect to be a co-respondent in an appeal of the matter.
- (2) An appellant may start an appeal within the appeal period.
- (3) The *appeal period* is—
  - (a) for an appeal by a building advisory agency—10 business days after a decision notice for the decision is given to the agency; or
  - (b) for an appeal against a deemed refusal—at any time after the deemed refusal happens; or
  - (c) for an appeal against a decision of the Minister, under chapter 7, part 4, to register premises or to renew the registration of premises—20 business days after a notice is published under section 269(3)(a) or (4); or
  - (d) for an appeal against an infrastructure charges notice—20 business days after the infrastructure charges notice is given to the person; or
  - (e) for an appeal about a deemed approval of a development application for which a decision notice has not been given—30 business days after the applicant gives the deemed approval notice to the assessment manager; or
  - (f) for any other appeal—20 business days after a notice of the decision for the matter, including an enforcement notice, is given to the person.

*Note—*

See the P&E Court Act for the court's power to extend the appeal period.

- (4) Each respondent and co-respondent for an appeal may be heard in the appeal.
- (5) If an appeal is only about a referral agency's response, the assessment manager may apply to the tribunal or P&E Court to withdraw from the appeal.

- (6) To remove any doubt, it is declared that an appeal against an infrastructure charges notice must not be about—
  - (a) the adopted charge itself; or
  - (b) for a decision about an offset or refund—
    - (i) the establishment cost of trunk infrastructure identified in a LGIP; or
    - (ii) the cost of infrastructure decided using the method included in the local government's charges resolution.

### **230 Notice of appeal**

- (1) An appellant starts an appeal by lodging, with the registrar of the tribunal or P&E Court, a notice of appeal that—
  - (a) is in the approved form; and
  - (b) succinctly states the grounds of the appeal.
- (2) The notice of appeal must be accompanied by the required fee.
- (3) The appellant or, for an appeal to a tribunal, the registrar, must, within the service period, give a copy of the notice of appeal to—
  - (a) the respondent for the appeal; and
  - (b) each co-respondent for the appeal; and
  - (c) for an appeal about a development application under schedule 1, table 1, item 1—each principal submitter for the development application; and
  - (d) for an appeal about a change application under schedule 1, table 1, item 2—each principal submitter for the change application; and
  - (e) each person who may elect to become a co-respondent for the appeal, other than an eligible submitter who is not a principal submitter in an appeal under paragraph (c) or (d); and

- (f) for an appeal to the P&E Court—the chief executive; and
  - (g) for an appeal to a tribunal under another Act—any other person who the registrar considers appropriate.
- (4) The *service period* is—
- (a) if a submitter or advice agency started the appeal in the P&E Court—2 business days after the appeal is started; or
  - (b) otherwise—10 business days after the appeal is started.
- (5) A notice of appeal given to a person who may elect to be a co-respondent must state the effect of subsection (6).
- (6) A person elects to be a co-respondent by filing a notice of election, in the approved form, within 10 business days after the notice of appeal is given to the person.
- (7) Despite any other Act or rules of court to the contrary, a copy of a notice of appeal may be given to the chief executive by emailing the copy to the chief executive at the email address stated on the department's website for this purpose.

## 231 Other appeals

- (1) Subject to this chapter, schedule 1 and the P&E Court Act, unless the Supreme Court decides a decision or other matter under this Act is affected by jurisdictional error, the decision or matter is non-appealable.
- (2) The *Judicial Review Act 1991*, part 5 applies to the decision or matter to the extent it is affected by jurisdictional error.
- (3) A person who, but for subsection (1) could have made an application under the *Judicial Review Act 1991* in relation to the decision or matter, may apply under part 4 of that Act for a statement of reasons in relation to the decision or matter.
- (4) In this section—  
*decision* includes—

- (a) conduct engaged in for the purpose of making a decision; and
- (b) other conduct that relates to the making of a decision; and
- (c) the making of a decision or the failure to make a decision; and
- (d) a purported decision; and
- (e) a deemed refusal.

**non-appealable**, for a decision or matter, means the decision or matter—

- (a) is final and conclusive; and
- (b) may not be challenged, appealed against, reviewed, quashed, set aside or called into question in any other way under the *Judicial Review Act 1991* or otherwise, whether by the Supreme Court, another court, any tribunal or another entity; and
- (c) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, any tribunal or another entity on any ground.

## 232 Rules of the P&E Court

- (1) A person who is appealing to the P&E Court must comply with the rules of the court that apply to the appeal.
- (2) However, the P&E Court may hear and decide an appeal even if the person has not complied with rules of the P&E Court.

**SCHEDULE 3 – RIGHT OF APPEAL WAIVER**

Mail To: Douglas Shire Council  
Email Address: enquiries@douglas.qld.gov.au  
Attention: Development Assessment

**RE:**  
**Council reference:** OP 3102/2019  
**Property Address:** 49-51 Nautilus Street Port Douglas, land described as Lot 5 on RP744198.

This advice is to confirm that I/We have received the above approval and agree to the conditions contained therein. I/We hereby waive My/Our appeal rights available under the *Planning Act 2016*.

Applicants Name: \_\_\_\_\_  
Signature: \_\_\_\_\_  
Date : \_\_\_\_\_